

Brianne Altice  
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FILED  
U.S. DISTRICT COURT

2018 NOV 16 P 1:08

In the United States District Court  
In and for the District of Utah, Central District

Joseph Guild-Wolff  
Plaintiff,

BY: \_\_\_\_\_  
DEPUTY CLERK

N.  
Davis County School District,  
Board of Education of the Davis  
School District, Brianne Land  
Altice, Bryan Bowles, Dee Burton,  
Richard Firmage, Kathy Evans,  
Scott Nielson and DOES HO.

Brianne Land Altice's Motion  
for Summary Judgment and  
Memorandum in Support

Case No. 1:15-cv-0162  
Case No. 1:15-cv-0157 (consolidated)

Defendants,

And  
Adrian Perez-Tamayo, Gina  
Muscolino, and Jose Perez-Tamayo  
Plaintiffs,

Judge Robert J. Shelby  
Magistrate Judge Dustin B. Read

V. [ETAL]  
Davis County School District,  
Davis High School, Brianne Land  
Altice, Bryan Bowles, Craig Roll,  
Doreen Paul, Craig Carter, Dee  
Burton, Richard Firmage,  
Bryan Bishop, Kathy Evans, Scott  
Nielson, and DOES HO

Defendants

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## Motion / Introduction and Relief Sought

Defendant Brienne Land Altice, Pro Se, pursuant to Federal Rule of civil procedure 56 and District 56-1, move for summary judgment on all claims against her in the amended complaint filed by Plaintiff Joseph Guild-Wolf (Doc. 6 in case '162) and the complaint filed by Adrian Perez-Tamayo, Gina Muscolino, and Jose Perez-Tamayo (Doc. 2 in Case '157). The bases of the motion include:

1. Brienne Land Altice is entitled to summary judgment on Plaintiff's Breach of Fiduciary Duty claim because
  - A- If a Fiduciary Duty exists between teacher and student, the duty is low and poorly defined.
  - B- Mr. Guild-Wolf was not particularly dependant upon Ms. Altice.
  - C- The one time sexual intercourse took place after the end of the school year, and not on school property.
2. Brienne Land Altice is entitled to summary judgment on All other claims because
  - A- Refer to Assistant Utah Attorney General's Motion for summary Judgment in this case.

For these reasons, as more fully described in the Memorandum of law attached hereto, Ms. Brienne Land Altice request the Court to grant her motion and dismiss all claims in both complaints with prejudice.

## Memorandum of Law

### Statement of Undisputed material facts.

- 1- Refer to Assistant Utah Attorney General's Memorandum of law in Motion for summary Judgment in this case.

### Legal Standard

Summary Judgment is appropriate against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case on which that party will bear the burden of proof at trial. In such a situation, there can be no issue of material fact because a failure of proof on an essential element of the non-moving party's case necessarily renders all other facts immaterial.

*Celotex Corp v Catrett*, 477 U.S. 317, 322-23 (1986).

### Legal Argument

I. Ms. Altice did not breach any fiduciary duty.

Guild-Wolff's sixth Cause of Action claims a breach of fiduciary duty.

Defendant is entitled to judgment as a matter of law on Plaintiff's Breach of Duty Claim. First, Plaintiff Guild-Wolff's claim against Ms. Altice must be dismissed, because if a fiduciary duty even exists between teacher and student the duty is low. Second, Plaintiff's lack of evidence on the elements of fiduciary duty cause of action against the defendant. Therefore, Ms. Altice is entitled to summary judgment.

#### A-Fiduciary Duty Claim

If a fiduciary duty exists, it is a comparatively low degree of duty. The teacher student relationship is one defined by rights rather than duty, and for contractual rather than duty. Some courts conclude that the relationship between teacher and student is NOT a fiduciary relationship. *Andie v Pace U.*, 655 N.W.2d 771 (Iowa, Div 2d Dept. 1996) *H2 v U. of Tex. at Arlington*, 984 S.W.2d 672 (Tex. App. 7th Dist. 1995) Ms. Altice's behavior was not a breach of fiduciary duty. compare *Chou*, 251 F.3d at 1347 with *U. of W. v. V*



VanVoorhies, 278 F.3d 1288 (Fed Cir. 2002).

Ms. Altice acted in a sphere of conduct where a fiduciary has relatively little power and control over a student, and is closely supervised and had little control over curricular and other choices: i.e. student number, and who is enrolled or admitted into each of her classes.

Ms. Altice taught in a tightly bound environment with little discretion, thereby having a low magnitude of duty. Ms. Altice was a teacher who had less exposure to a large number of students also lowering the degree of duty.

The nature of Mr. Guild-Wolff's "reliance" on Ms. Altice was also very low. In this case there was no "special relationship" created by teacher and student which is required for a fiduciary relationship to exist. Teacher did not select student, and student did not choose teacher. This relationship was created from informal means, which is too low a degree of reliance as a general matter. *Adorno v Delgado*, 2004 WI. 2348158 at \*2 (Ohio App. 9<sup>th</sup> Dist. Oct 20, 2004) ("A fiduciary relationship may be created either formally, by contract, or informally. In informal relationship, however, cannot be unilateral, and occurs only where "both parties understand that a special relationship or trust has been reposed." (quoting *Culbertson v Wigley Title Agency, Inc.*, 2002 WI. 27570 at \*3 (Ohio App. 9<sup>th</sup> Dist. Feb 13, 2002 (internal quotation omitted))).

As a general matter, the rights and duties of an educator are vague and subject to minimal elucidation. There are duties that lie on the periphery of the teacher's responsibility or that are ill defined. The fiduciary expectations of an educator are not clearly defined, and not sufficiently explained.

The scope of Altice and Guild-Wolff's relationship was the result of an assignment that did not reflect the will or preference of either party in respect to teacher/student. Mr. Guild-Wolff was not particularly dependent upon Ms. Altice. Except for

English curriculum, educational guidance, course work, and materials, which were all provided for Mr. Guild-Wolff by Ms. Altice. See *Zumbrun v. U. of S. Cal.*, Rptr. 449, 804 (Cal. App 2nd Dist. 1972) ("The mere placing of trust in another person does not create a fiduciary relationship. An agreement to communicate one's knowledge, exercising his special knowledge and skill in the area of learning concerned, does not create a trust, but only a contractual obligation.") The reasons for reliance are offered by Mr. Guild-Wolff, and that reliance is based largely or entirely upon the projection of duty upon Ms. Altice as a would-be fiduciary, lowering the magnitude of duty once again. See *Ho v U. of Tex. at Arlington*, 984 S.W2d 672 (Tex App, 7th Dist. 1988) (finding, as a matter of law that "formal fiduciary relationships do not exist between teachers and students in a normal education setting," Ms. Altice was unaware of any such reliance of Plaintiff Guild-Wolff on her.

The common law standards of fiduciary duty also holds a relatively low magnitude of duty, if at all, in this case.

B. One time sexual intercourse after end of school year and off of school property.

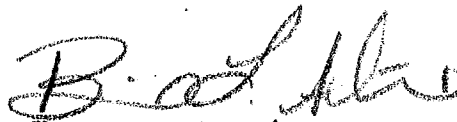
Ms. Altice and Mr. Guild-Wolff's sexual intercourse was an isolated incident, and took place after said school year, and off of Davis High School campus. The defendant does not prove claim of psychological, developmental, or any other injuries, which does not meet the plaintiff's burden of proof.

II. For all other claims, refer to the Motion for Summary Judgment filed by Kyle J. Kaiser Assistant Utah Attorney General in this case.

Conclusion

For the reasons stated, Ms. Altice requests the court to grant her motion, and dismiss all claims brought by both defendants with prejudice.

Dated: November 14, 2018



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